

C O P Y

George F. Nelson, Esq.  
Assistant Attorney General

February 19, 1954

Attorney General

Railroad taking - Farmington-New Durham  
F-216(5). F-45(2)

Stanton C. Otis  
Right-of-Way Engineer  
Department of Public Works and Highways

Dear Sir:

Your inquiry of February 12, 1954 relative to continuous taking over the easement of the Boston and Maine Railroad is answered as follows:

Revised Laws, chapter 299, as amended by Laws of 1951, chapter 203, section 58, provides (sections 4 and 6) that railroads obtain consent to cross a highway at grade and that no highway shall be laid out or constructed to cross a railroad at grade without like consent.

The railroad's title is an easement for railroad purposes and the State's title is an easement for highway purposes. The relative duties of the State and railroad in the construction and use of their rights over this crossing have been clearly set out by Public Utilities Commission Order No. 6156 of November 6, 1952.

No reason is perceived why a continuous layout across the railroad tracks as returned and filed should not remain.

If emendation is required, it should be confined only to an amendment reducing the taking to a taking of 40 feet on the west side of the center line Northerly from opposite station 108 to the Northwestern line of the railroad's right of way.

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Very truly yours,

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CONCORD, N.H.

George F. Nelson  
Assistant Attorney General

GFN:HP

P.S. I return herewith the material which accompanied your letter of February 12.